

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Section 1472.5 and adopt new Section 1472.8 of the regulations in Title 3 of the California Code of Regulations pertaining to tomatoes.

Notice is also given of a written public comment period. Any interested person may present statements or arguments in writing relevant to the proposed regulation until 5:00 p.m. on May 21, 2004. Please refer to the contact section of this notice for the contact persons and address information when submitting comments.

A public hearing is not scheduled but will be if any interested person, or his or her duly authorized representative, submits a written request for public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing (if one is requested) or following the written comment period (if no public hearing is requested), the Department of Food and Agriculture, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1472.5 provides criteria for labeling tomatoes as "vine ripened". The existing regulation allows tomatoes to be labeled as vine ripened if the skin surface or the flesh has attained some discernible degree of pink or red color at the time it is prepared or packed for distribution.

The specific purpose of amending Section 1472.5 is to specify that a tomato labeled as vine ripened must be field grown and has attained some discernible degree of pink or red color at the time of harvesting.

Currently, Article 43 of the California Code of Regulations does not provide a definition for the term "greenhouse grown" or criteria for tomatoes labeled as such.

Section 78636(b) of the California Food and Agricultural Code provides a definition for the term "greenhouse grown" as it pertains to tomatoes. The specific purpose of amending Article 43 is to adopt this definition into the California Code of Regulations as Section 1472.8 and establish criteria for labeling tomatoes as "greenhouse grown".

FISCAL IMPACT STATEMENTS

The Department has initially determined that these proposed regulations would have no effect on savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will

result from these proposed regulations. The Department determined that these proposed regulations do not impose a mandate on local agencies or school districts.

EFFECT ON SMALL BUSINESS

The Department has initially determined that the proposed changes in the regulations would result in no significant added costs to small businesses affected by these proposed changes. The Department does recognize that there could be a potential economic impact to some growers. This is based on the fact that vine ripened tomatoes tend to be sold at a higher rate than other tomatoes thus generating more revenue. Currently growers have the ability to label tomatoes as vine ripened as long as they meet the color criteria at the time of preparing or packing regardless of the growing or ripening method. Some growers are harvesting green tomatoes and treating them with ethylene to begin the ripening process. Consumers are paying a premium price for tomatoes they believe were ripened on the vine. The proposed regulation changes would no longer allow ethylene treated tomatoes to be labeled as vine ripened.

However, the Department believes the proposed regulation changes are necessary to protect the integrity of the industry as well as consumers from deceptive agricultural practices. The proposed changes meet the needs of both, the affected commodity group and the consumer, without requiring substantial changes on the part of industry.

EFFECT ON HOUSING COSTS

The Department has initially determined that the amendments of the proposed regulation would have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has initially determined that these proposed changes would have no significant statewide adverse economic impact directly affecting businesses, including the ability for California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has initially determined that the proposed changes in the regulations would not affect the creation or elimination of jobs in California and would neither create nor eliminate or expand existing businesses in California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS

The Department is not aware of any significant cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407, 42681, 42682, and 42684 of the Food and Agricultural Code, and to implement, interpret, and make specific Section 42941 and 42514 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

CONTACT

Inquiries concerning the proposed administrative action may be directed to Sonja Dame or Gary Manning. Inquiries pertaining to the substance of the proposed regulation may be directed to Gary Manning. The contact persons may be reached at the Department of Food and Agriculture, Inspection and Compliance Branch, 1220 N Street, Sacramento, CA 95814, (916) 445-2180, fax (916) 445-2427. Written comments may also be submitted via e-mail to sdame@cdfa.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

A complete copy of existing regulations, the proposed changes, and the Initial Statement of Reasons may be obtained on request from the Department of Food and Agriculture. These documents are available on our website at www.cdfa.ca.gov/cdfa/regs.

In addition, all information, including reports, documentation, and other materials (rulemaking file) related to the proposed action is available upon request from the agency contact persons named in the notice. The Final Statement of Reasons, when available, may also be obtained from the agency contact persons named in the notice. The text of the proposed regulations with any sufficiently related changes clearly indicated will be made available for 15 days prior to adoption.

DEPARTMENT OF FOOD AND AGRICULTURE

Date

Valerie Brown, Deputy Secretary

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3. California Code of Regulations

Article 43. Tomatoes

Amend Section 1472.5 to read:

Section 1472.5. Tomatoes, Vine Ripened Defined.

Tomatoes labeled with the term “vine ripened,” ~~or similar wording which may give the impression,~~ shall be considered mislabeled unless the surface or the flesh of each tomato has attained some discernible degree of pink or red color at the time of ~~preparing or~~ packing harvest.

Note: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Sections 42941 and 42943, Food and Agricultural Code.

Adopt Section 1472.8 to read:

Section 1472.8. Tomatoes, Greenhouse Grown Defined.

Tomatoes labeled with the term “greenhouse grown” shall be considered mislabeled unless tomatoes are grown in a fixed steel structure using irrigation and climate control, in an artificial medium that substitutes for soil.

Note: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Sections 42941 and 42943, Food and Agricultural Code.